
(1976) 09 MAD CK 0034
In the Madras High Court

Annamalai Gounder

APPELLANT

Vs

Chinnathambi Gounder and Others

RESPONDENT

Date of Decision : 14-09-1976

Acts Referred:

Citation : (1977) 1 MLJ 385

Hon'ble Judges : V. Ramaswami, J

Bench : Division Bench

Judgement

V. Ramaswami, J.—The fifth defendant is the appellant. The first respondent filed the suit for specific performance of contract of sale

executed by one Ayyakannu Gounder and defendants 1 and 2, who are the sons of Ayyakannu Gounder The contract of sale is dated 23rd April,

1970, under which Ayyakannu and his two sons agreed to sell the property to the plaintiff for a sum of Rs. 4,500 and received a sum of Rs. 2,500

as an advance. The balance of Rs. 2,000 was agreed to be paid within a period of one year. The plaintiff further stated that in pursuance of the

agreement of sale the plaintiff was put in possession of the suit property and that he was in possession on the date of the suit and had raised

groundnut crops thereon. The suit itself was filed on 18th December, 1970. Since by that time Ayyakannu had died, the suit was originally filed

against defendants 1 to 4, who are the sons, daughter and wife of the said Ayyakanou. The plaintiff had made the usual averments in the plaint that

in pursuance of the agreement to sell he was ready and willing to pay the balance of consideration and in fact he tendered the money; but the

defendants would not execute the sale deed. The plaintiff also deposited the balance of consideration of Rs. 2,000 along with the plaint.

2. The first defendant filed a written statement in which he stated that on 17th February, 1970 he had sold the property to one Annamalai

Gounder, who has now been impleaded as the fifth defendant in the suit, for a consideration of Rs. 7,000 and that the sale deed also has been

registered. The first defendant further contended that though he executed an agreement of sale in favour of the plaintiff, the property was highly

undervalued and the consideration was palpably low. The property was worth more than Rs. 6,500 to Rs. 7,000 on the date of the sale and it was

undervalued to defeat the provisions of the Stamp Act. The first defendant, therefore, prayed that the Court should not exercise its discretionary

power of granting relief for specific performance to the plaintiff, who had come to the Court with unclean hands.

3. When coming to know of the sale in favour of Annamalai Gounder, the plaintiff impleaded him as the fifth defendant in the suit and amended the

plaint contending that the fifth defendant is not a bona fide purchaser for value and that, therefore, he could ask for specific performance even

against the fifth defendant. The fifth defendant filed a written statement stating that he had purchased the property for a valuable consideration of Rs.

7,000 under a registered sale deed without the knowledge of the prior agreement in favour of the plaintiff and that as a bona fide purchaser for

value, he is entitled to remain in possession. The fifth defendant also stated that he had taken possession of the property in pursuance of the sale in

his favour.

4. Though the first defendant filed a written statement which was adopted by defendants 2 to 4 none of them let in any evidence either oral or

documentary. The plaintiff examined himself and 2 others and also marked the agreement of sale. The fifth defendant examined himself and another

third party and filed the registered sale deed in his favour. On a consideration of the evidence both oral and documentary, the trial Court came to

the conclusion that the fifth defendant was not a bona fide purchaser for value without notice of the original contract in favour of the plaintiff. The

trial Court did not agree that there was any under valuation in order to defeat the provisions of the Stamp Act and ultimately decreed the suit as

prayed for. It may be mentioned that the trial Court was willing and in fact proceeded to consider the case on the basis that the fifth defendant had

paid the sum of Rs. 7,000 as per the sale deed to defendants 1 to 4, who are the legal heirs of the original owner, Ayyakannu. The trial Court also

proceeded on the assumption that the plaintiff in pursuance of the agreement to sell, was put in possession of the property and he was in

possession of the property on the day when the suit was filed.

5. Pending the Suit, the fourth defendant, the widow of Ayyakannu, died and defendants 1 to 3, the 2 sons and daughter, were recorded as legal

representatives of the fourth defendant. Defendants 1 to 3 and 5 preferred an appeal before the learned Subordinate Judge of Tiruvannamalai. The

appellate Court confirmed the findings of the trial Court that there was a valid and enforceable contract of sale between the plaintiff and Ayyakannu

and his sons and that the fifth defendant was not a bona fide purchaser for value and without notice of prior contract of sale. The lower appellate

Court specifically found that in pursuance of the contract of sale the plaintiff was put in possession of the property and he was in possession on the

day when the suit was filed. In that view, the appeal was dismissed. It may be mentioned that the trial Court made some mistake about the amount

to be paid by the plaintiff to defendants 1 to 4, which was rectified by the lower appellate Court and thus need not detain us any further. Suffice it

to say that the plaintiff was made liable to pay the sum of Rs. 4,500 for getting the specific performance and he was given a credit for the sum of

Rs. 2,500 which he had paid to Ayyakannu as an advance.

6. In this second appeal the learned Counsel for the appellant strenuously contended that the whole approach of the lower appellate Court and the

trial Court in finding that he purchased the property with notice of the prior contract of sale was wrong and based on a wrong assumption that the

plaintiff had taken possession of the property in pursuance of the contract of sale and that, therefore, the fifth defendant must have been aware of

the contract of sale. As already stated, there is no dispute that the sum of Rs. 7,000 was paid by the fifth defendant to defendants 1 to 4 as per the

registered sale deed executed by them. In fact, the first defendant in his written statement had accepted the payment and this was not disputed

during the trial.

7. The only question, therefore, for consideration was whether he paid this money in good faith and without notice of the original contract. Though

the learned Counsel for the appellant challenged the finding that the plaintiff was put in possession of the property in pursuance of the contract of sale and was in possession on the date when he filed the suit, I am unable to interfere with the finding of the Courts below. The trial Court, of course, did not give any specific finding that the plaintiff was put in possession in pursuance of the contract of sale, but proceeded on the assumption that he was put in possession. But the lower appellate Court accepted the evidence of P.Ws. 1 to 3, who specifically and categorically stated that the plaintiff was put in possession and he had raised groundnut crops there. The lower appellate Court also pointed out that there was conflict in the evidence of D.Ws. 1 and 2 on this regard. While D.W.1 stated that the fifth defendant did not take possession in pursuance of the sale in his favour, the fifth defendant a"" D.W. 2 stated that he did take possession. D.W.1 was also not prepared to deny that the plaintiff raised groundnut crops. He only stated that he was not aware of it. In any case, the lower appellate Court had chosen to rely on the evidence of P.Ws. 1 to 3 in regard to possession of the suit property and I do not think there is any reason to interfere with that finding in the second appeal. If the possession is to be taken as having been given to the plaintiff, I think the finding of the Courts below that the fifth defendant had not paid the consideration in good faith and without notice of the original contract has to be accepted. If the plaintiff was in possession, as held by this Court in *Veeramalai Vanniar (Died) and Others Vs. Thadikara Vanniar and Others*, the fifth defendant immediately puts defendants 1 to 4 with a notice of warning to enquire into the nature and character of the possession, of the plaintiff. If he had not done so before purchasing the property, he could not be held to be a bona fide purchaser without notice of the original contract. Further it is in evidence that the suit property is only a portion of a survey number and the fifth defendant is owning some other portion in the same survey number. The survey number is said to measure about 7 acres of which only 1.42 acres are the subject-matter of the suit. The portion remaining is owned by the fifth defendant. Necessarily, therefore, the fifth defendant must have known that the plaintiff is in possession of the suit property and that should have put him on notice of the contract of sale. The parties are also living in the same village and their residence are stated to be, in fact in the same street. In those circumstances the Courts

below were right in holding that the fifth defendant was not a bona fide purchaser without notice of the original contract.

8. The learned Counsel for the appellant next contended that since there is no dispute, he had paid the sum of Rs. 7,000 to defendants 1 to 4 and

got the sale-deed executed in their favour, though the plaintiff may be entitled to enforce the specific performance of the contract even as against

the fifth defendant, defendants 1 to 4 will not be entitled to be paid the sum of Rs. 2,000 already in Court deposit and that that amount will have to

be paid to the fifth defendant. u/s 19 (b) of the Specific Relief Act, 1963, specific performance of a contract may be enforced against my person

claiming under either party to the contract of sale by a title arising subsequent to the contract except a transferee for value who has paid his money

in good faith and without notice of the original contract. I have already held, accepting the findings of the Courts below, that the fifth defendant had

not paid the money in good faith and without notice of the original contract. But still he is a person claiming under the original owner by a title

arising subsequently to the contract of sale in favour of the plaintiff. Therefore, specific performance may be enforced even, as against the fifth

defendant. This provision, in my opinion., does not in any way affect the passing of the title to the fifth defendant. In fact, Section 91 of the Indian-

Trusts Act, 1882, states that where a person acquires property with notice, that any person had entered into an existing contract affecting that

property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to

give effect to the contract. Thus, the sale deed itself though not invalidated and was treated as valid, the plaintiff who is having the agreement to sell

was entitled to ask for specific performance even as against the fifth defendant transferee. The Supreme Court in Lala Durga Prasad and Another

Vs. Lala Deep Chand and Others, held that in such a case the proper form of decree was to direct specific performance of the contract between

the vendor and the plaintiff and direct the subsequent transferee to join in the conveyance so as to pass on the title which resided in him to the

plaintiff. Though the subsequent transferee did not join in any special covenants made between the plaintiff and his vendor, he had to join in the

conveyance so as to pass on his title to the plaintiff. The Supreme Court further held that even in such a case the normal rule should be to require

that the balance of consideration, be paid to the original owner and it would not be right to lay down that in every case the balance of the purchase money should be paid to the subsequent transferee up to the extent of the consideration paid by him."" But the Supreme Court further held that this question might be put as an issue as between the vendor and the subsequent transferee as to whether the amount was to be paid to the subsequent transferee or to the vendor. It was also open to the Court as an equitable relief to direct the amount to be paid to the subsequent transferee if it would appear to be an unjust enrichment to the original vendor or if the equities warranted such a position, the Court had a wide discretion in that regard.

9. I have considered this question. As already stated, the fifth defendant had paid the sum of Rs. 7,000 and it is also stated that defendants 1 to 3 are not possessed of sufficient means and if this sum of Rs. 2,000 deposited by the plaintiff in Court is also paid to defendants 1 to 3, it will not be possible for the fifth defendant to recover any portion of the consideration paid by him. Though the agreement to sell in favour of the plaintiff was only for a sum of Rs. 1,500 in addition to the sum of Rs. 2,500 received by the vendors as advance from the plaintiff, they have also received a sum of Rs. 7,000 from the fifth defendant. They shall not be unjustly permitted to enrich themselves by requiring the sum of Rs. 2,000 remaining in Court also to be paid to them. 1, therefore, direct that on execution of the sale-deed in favour of the plaintiff, the sum of Rs. 2,000 in Court deposit will have to be paid to the fifth defendant. But this will be without prejudice to the fifth defendant to claim the balance of consideration, paid by him from his vendors.

10. The decree, therefore, should direct defendants 1 to 3 to execute the sale-deed and the fifth defendant to join in the execution of the sale-deed in favour of the plaintiff and it should also direct the amount in Court deposit to be paid to the fifth defendant instead of to defendants 1 to 3.

Subject to this modification in the form of the decree, the second appeal is dismissed. The parties will bear their respective costs throughout.

11. There are absolutely no merits in the cross-objections. The "" cross-objections are also dismissed. But there will be no order as to costs in the cross objections also. No leave both in the second appeal and the cross-

objections.